

Supreme Court, U. S.

FILED

SEP 2 1977

MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-345

ONE 1974 CADILLAC ELDORADO
VIN 6L4754Q428834,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JAMES R. WYRSCH and
RICHARD H. ANTON

1050 Home Savings Building
1006 Grand Avenue
Kansas City, Missouri 64106
Attorneys for Petitioner

INDEX

Opinions Below	1
Jurisdiction	2
Question Presented	2
Constitutional and Statutory Provisions Involved	2
Statement	4
Reasons for Granting the Writ	6
1. Certiorari should be granted to resolve conflicts in principle among the courts of appeals and to decide an important question of federal law which should be settled by this Court	6
2. The Eighth Circuit Court of Appeals has decided a federal question in a way in conflict with ap- plicable decisions of this Court	12
Conclusion	15
Appendix A	A1
Appendix B	A8
Appendix C	A19

Citations

CASES

<i>Boyd v. United States</i> , 116 U.S. 616 (1886)	13
<i>Coolidge v. New Hampshire</i> , 403 U.S. 443 (1971)	6, 7, 9, 11
<i>Grosso v. United States</i> , 390 U.S. 62 (1968)	13
<i>Marchetti v. United States</i> , 390 U.S. 39 (1968)	13
<i>Melendez v. Schultz</i> , 356 F.Supp. 1205 (D.Mass. 1973) ..	9

<i>United States v. Bozada</i> , 473 F.2d 389 (8th Cir. 1973), cert. denied, 411 U.S. 969	10, 11
<i>United States v. McCormick</i> , 502 F.2d 281 (9th Cir. 1974)	6, 8, 9, 10
<i>United States v. United States Coin & Currency</i> , 401 U.S. 715	13

CONSTITUTION AND STATUTES

Constitution of the United States—	
Fourth Amendment	2, 6
Fifth Amendment	2, 12, 13
28 U.S.C. 1254(1)	2
49 U.S.C. Section 781	3, 9, 12, 13, 14
49 U.S.C. Section 782	3, 9, 12, 13, 14

In the Supreme Court of the United States

OCTOBER TERM, 1977

No.

ONE 1974 CADILLAC ELDORADO
VIN 6L4754Q428834,

Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

Petitioner prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered in this matter on August 5, 1977.

OPINIONS BELOW

The August 5, 1977 opinion of the Court of Appeals, is not yet reported and is reprinted in the separate Appendix A to this Petition, pp. A1-A7. The prior opinion of the United States District Court for the Western District of Missouri is not yet reported and is reprinted in the separate Appendix B to this Petition, pp. A8-A18.

JURISDICTION

The judgment of the Court of Appeals was filed on August 5, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the seizure and forfeiture of a Cadillac automobile were valid where the Cadillac was parked in an alleyway with no possible exit, the driver was out of the Cadillac and was in the custody of several government agents, the authorities knew in advance where the Cadillac would be, and the seizure and forfeiture were without a search warrant.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the following Amendments and Statutes:

The Fourth Amendment to the Constitution of the United States provides:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fifth Amendment to the Constitution of the United States provides:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

49 U.S.C. Section 781 provides in pertinent part:

"(a) It shall be unlawful (1) to transport, carry, or convey any contraband article in . . . any . . . vehicle. . . .

. . . .

"(b) As used in this section, the term 'contraband article' means—

. . . .

"(a) Any firearm, with respect to which there has been committed any violation of any provision of the National Firearms Act. . . ."

49 U.S.C. Section 782 provides in pertinent part:

"Any . . . vehicle . . . which has been or is being used in violation of any provision of section 781 of this title . . . shall be seized and forfeited: . . . *Provided further*, that no . . . vehicle shall be forfeited under the provisions of this chapter by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such . . . vehicle . . . was

unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States, or any State." (Emphasis added.)

STATEMENT

The petitioner was seized concurrently with the arrest of its owner Cleo Burgard (hereinafter "Burgard") by agents of the Bureau of Alcohol, Tobacco and Firearms (hereinafter "BATF") for violation of Federal Firearm Laws, on May 6, 1975. On September 24, 1975, respondent herein filed its Complaint for forfeiture of petitioner, under 26 U.S.C. Section 7302, charging that the petitioner had been used to possess, conceal, and transport firearms, in violation of 26 U.S.C. Sec. 5841, being contraband as defined by 49 U.S.C. 781. In his Answer and Claim, Burgard alleged that the seizure was invalid and in violation of the Fourth and Fifth Amendments to the United States Constitution, and that the forfeiture proceeding had not been properly authorized or sanctioned by the Secretary of the Treasury.

The United States District Court for the Western District of Missouri issued its Final Judgment Granting Decree of Forfeiture on November 22, 1976. Appendix B at A17-A18. In said Final Judgment the Court made certain findings of fact, summarized as follows: Agents of the BATF had been conducting an investigation which included Burgard. These agents were informed of an exchange of illegal silencers between Burgard and Garry Johnson (hereinafter "Johnson") to occur on May 6, 1975. Another BATF agent observed Burgard load a certain blue and white box into the petitioner Cadillac. At approximately 11:10 A.M. on May 6, 1975, at least seven BATF agents entered an alleyway in the area of 64th and Troost in Kansas City, Mis-

souri, and arrested Burgard and Johnson, after having observed Burgard remove a light colored tube from the petitioner and pass it to Johnson. The agents discovered two Maxim silencers on the person of Johnson, and the petitioner was seized without a warrant.

The agents of the BATF had information prior to the date of the arrest that the exchange was to occur. Moreover, Burgard had been subject to surveillance for several weeks, and the agents were fully knowledgeable as to the description of Burgard's automobile, the petitioner herein. They had ample opportunity to obtain a warrant prior to the arrest but failed to do so. In addition, the petitioner was parked in an alleyway with only one entrance or exit, and that was blocked by several vehicles being operated by the BATF agents. In addition, Burgard was in the custody of the BATF agents and had no access to the petitioner after Burgard was arrested. The Cadillac was searched without a warrant the day following the arrests, and the agent searching it found a pistol in the trunk.

On May 8, 1975, Burgard was indicted on one count of conspiracy to violate the National Firearms Registration Act, 26 U.S.C. Sec. 5801, et seq., in violation of 18 U.S.C. Sec. 371, and one count of transfer of the two silencers in violation of 26 U.S.C. Sec. 5861(e). On February 11, 1976, Burgard was convicted on both counts by a jury.

The opinions of both Courts below were based upon their findings that the BATF agents had probable cause to believe that the petitioner had been used to transport contraband and that sufficient "exigent circumstances" existed to justify seizure without a warrant. Both Courts upheld the seizure and forfeiture. Appendix A1-A7 and A9-A17.

REASONS FOR GRANTING THE WRIT

1. **Certiorari should be granted to resolve conflicts in principle among the courts of appeals and to decide an important question of federal law which should be settled by this Court.**

The Fourth Amendment to the Constitution affords protection against either search or seizure without a warrant:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The courts have recognized a rule that searches and seizures accomplished without a warrant are per se unreasonable, subject to a few specific and well-defined exceptions, and that the burden is on the government to prove that the circumstances of the seizure bring it within a recognized exception. *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55 (1971). If the government cannot show a recognized exception, its agents must obtain a warrant before either a search or a seizure; the determination that the right to privacy must yield to the rights of search and seizure is to be made by a judicial officer, not a policeman or government agent. *U. S. v. McCormick*, 502 F.2d 281, 285 (9th Cir. 1974).

An exception for "exigent circumstances" has developed in response to the unique characteristic of the automobile as evidence, namely its mobility, which not only pro-

vides a means of escape for its occupants but also allows them to carry away incriminating evidence stored therein. Exigent circumstances justify a warrantless search of an automobile stopped on the highway when probable cause exists for such a search, because the automobile is movable, its occupants are alerted, and the contents may never be found if a warrant must be obtained. On the other hand, when the objects being sought are not dangerous per se, or when policemen prevent the suspects from having access to the automobile, when they have prior knowledge as to the identity of the automobile and as to the evidence for which they will be searching, they should obtain a search warrant before undertaking a search and seizure. *Coolidge v. New Hampshire*, *supra* at 460.

Cases at all levels in the federal courts support the position of the defendant that insufficient exigencies were present to justify the seizure of defendant without a warrant. In *Coolidge v. New Hampshire*, *supra*, the defendant had been arrested on charges of murder. His automobile, in which he allegedly carried the body of the murder victim, was seized and searched under a warrant issued by the state attorney general acting as a justice of the peace. The Supreme Court first ruled that the warrant was invalid because the attorney general, who was actively in charge of the investigation and prosecution, was not in reality a "neutral and detached magistrate" when he issued the warrant. 403 U.S. at 449. The court then proceeded to discuss various theories to support a warrantless search and seizure.

In its rejection of the exception for exigent circumstances, the one currently at issue, the court pointed to several facts that precluded its application. The defendant had made no indication that he would attempt to escape. The possible use of the car had been known to the police

for some time, and the defendant already had ample opportunity to destroy any evidence. The defendant was not using the car for illegal purposes at the time of his arrest, and it was parked in his driveway. The defendant voluntarily admitted police officers at the front and rear of his residence and was arrested inside the house without resistance. He could not conceivably have reached the car after the police arrived, and the police removed the only other occupant of the house—the defendant's wife—prior to their towing the automobile to the police station.

Although the police clearly had probable cause to make the arrest, they could not justify the subsequent seizure without a warrant by claiming the existence of exigent circumstances. “(N)o amount of probable cause can justify a warrantless search or seizure absent ‘exigent circumstances’ (E)ven where the object is contraband, this Court has repeatedly stated and enforced the basic rule that the police may not enter and make a warrantless seizure.” *Id.* at 468. (Emphasis added.)

The case of *U. S. v. McCormick*, 502 F.2d 281 (9th Cir. 1974), presents a situation in which a court of appeals in another circuit declined to find sufficient exigent circumstances to justify a warrantless search and seizure. The defendant was charged with various activities involving counterfeit money. The defendant was arrested inside his home, and the federal agents had parked in his driveway and blocked egress for his automobile. Within an hour the agents drove his automobile to the federal office building, and upon searching the next day, without a warrant, agents found a photographic negative of a treasury seal.

Although the agents had probable cause to believe the automobile had been used in an illegal counterfeiting operation, it was not being so used at the time of the

seizure. Moreover, since the defendant was in the complete custody of the arresting agents and the defendant's automobile was blocked in the driveway by the agents' automobiles, such exigent circumstances as to authorize a warrantless seizure did not exist, and therefore the search and seizure were invalid.

In *Melendez v. Schultz*, 356 F.Supp. 1205 (D.Mass. 1973), the BATF seized a vehicle which had originally been impounded by the Boston police department due to unpaid parking tickets. The BATF exercised jurisdiction under 49 U.S.C. Secs. 781, 782 in that the defendant had been observed in the automobile in the possession of a Molotov cocktail. The BATF did not obtain a warrant for the seizure but instead relied upon a “probable cause” to believe the defendant had used the automobile to transport contraband. The District Court, relying on the nature of the automobile as “derivative contraband,” property not illegal in nature but used for criminal purposes, held the seizure without a warrant to be illegal.

“We merely hold that before seizing vehicles and other items of derivative contraband, the forfeitable nature of which often depends on the making of delicate judgments about previous facts and circumstances, the agent must first procure a warrant except in those established circumstances where a warrant would not be required to make a search.”

Id. at 1210. The courts in the *Coolidge* and *McCormick* cases made similar references to the distinction between derivative contraband and contraband per se.

The circumstances surrounding the arrest of the defendants Burgard and Johnson and the seizure and subsequent search of the petitioner Cadillac are so nearly identical to those in *McCormick* as to lack the exigencies that justify

search and seizure without a warrant. The Cadillac could not be driven out of the alleyway, as the only exit was blocked by at least one automobile driven by a government agent. Moreover, Burgard was in the custody of seven armed agents and was several feet away from the automobile; thus he had no opportunity to gain access to the automobile and nowhere to go if he had somehow managed to reach it. The Cadillac was immovable, and any contraband or other evidence therein could not be removed by anyone other than government agents. The Cadillac itself was derivative contraband rather than contraband per se, as its mere ownership and use is not illegal. A pistol was discovered in the trunk, but Burgard, being in the custody of several agents, would have been unable to make use of it at the moment of his arrest. The agents knew prior to the arrest that Burgard would be driving his Cadillac, and at least one agent was at the federal courthouse only shortly before the arrests; therefore, the government had ample opportunity to obtain a search warrant prior to the arrests. Moreover the Cadillac was in government custody overnight before the search was made, and the agents could certainly have obtained a warrant prior to the search. Thus the requisite "exigent circumstances" for a warrantless search and seizure are lacking, and the seizure was thereby invalid.

A comparison with a case wherein the "exigent circumstances" did exist accentuates the deficiencies of that finding in the case at bar. In *U. S. v. Bozada*, 473 F.2d 389 (8th Cir. 1973), *cert. denied*, 411 U.S. 969, the defendant was convicted of unlawful possession of goods stolen from a motor vehicle while moving in interstate commerce. The police had information that stolen shoes were stored in a trailer and that the defendant was planning to move the trailer soon. Police located the trailer, which was already

hooked to a tractor and was ready to be moved. After observing the area for about an hour, the police broke into the trailer, without a warrant, and discovered that it was full of stolen shoes. The court cited several exigent circumstances that justified the warrantless search: the trailer was being used at that time to transport stolen shoes; the police had reliable information that a move was imminent; the tractor-trailer was already prepared for movement; the owner-driver of the unit was not in custody; and other parties who may have been able to move the unit were still at large. Despite these facts two judges dissented on the grounds that the police had time to obtain a warrant prior to the seizure.

The situation involving Burgard contrasts starkly with *Bozada*. Burgard's Cadillac was not being used to transport contraband at the time of his arrest. The Cadillac was immovable at the moment of arrest and could not have been moved out of the alleyway. The owner-driver was already in custody, and apparently no other involved parties were at large. In addition the government agents had ample opportunity to obtain a warrant prior to the seizure. The Supreme Court analyzed a similar situation in *Coolidge v. New Hampshire*, 403 U.S. 443 (1971):

"(W)here the discovery is anticipated, where the police know in advance the location of the evidence and intend to seize it, . . . (t)he requirement of a warrant to seize imposes no inconvenience whatever, or at least none which is constitutionally cognizable in a legal system that regards warrantless searches as 'per se unreasonable' in the absence of 'exigent circumstances.'"

Id. at 470-71.

Thus the case at bar presents a direct conflict with at least one opinion from another circuit and should be resolved by this court. Moreover, the question of whether a forfeiture may be authorized absent proper seizure is an important one that has not been settled but that should be settled by this court.

2. The Eighth Circuit Court of Appeals has decided a federal question in a way in conflict with applicable decisions of this Court.

The seizure of the automobile herein and the subsequent forfeiture proceedings were brought under 49 U.S.C. Sections 781 and 782. The former section states that the transportation or concealment of contraband firearms in any vehicle is unlawful. The latter section reads in pertinent part:

"Any vessel, vehicle, or aircraft which has been or is being used in violation of any provision of section 781 of this title, or in, upon, or by means of which any violation of said section has taken or is taking place, shall be seized and forfeited. . . ."

Thus the forfeiture can be authorized only in conjunction with another criminal proceeding, for the violation of 49 U.S.C. Section 781. The forfeiture proceeding herein therefore invokes the privilege against self-incrimination as set out in the Fifth Amendment to the Constitution.

"When the forfeiture statutes are viewed in their entirety, it is manifest that they are intended to impose a penalty only upon those who are significantly involved in a criminal enterprise. It follows from *Boyd*, *Marchetti*, and *Grosso* that the Fifth Amendment's privilege may properly be invoked in these proceedings."

United States v. United States Coin & Currency, 401 U.S. 715, 721-722. See also, *Grosso v. United States*, 390 U.S. 62 (1968); *Marchetti v. United States*, 390 U.S. 39 (1968); *Boyd v. United States*, 116 U.S. 616 (1886).

The *United States Coin and Currency* case, *supra*, involved a forfeiture proceeding against a sum of money in the possession of one Angelini and which the trial court found was to be used in a bookmaking operation in violation of internal revenue laws. This Court held in that case that a person accused of violating certain registration provisions for persons whose occupation consisted of gambling could properly invoke the Fifth Amendment privilege against self-incrimination and that such privilege provided a complete defense in the forfeiture proceeding.

Petitioner contends that the forfeiture proceedings brought pursuant to 49 U.S.C. 782 violate the Fifth Amendment protections in two respects. First, since Burgard could properly invoke his Fifth Amendment privilege against self-incrimination when accused of violating the firearm statutes, such privilege should extend to the forfeiture proceeding. *United States Coin & Currency, supra*. The money forfeited in *United States Coin & Currency*, as well as the petitioner herein, are derivative contraband, as their ownership and use are not illegal per se. Their owner should be able to bar their use against him under the protection of the Fifth Amendment.

Second, the Petitioner should be protected from forfeiture under the due process provision of the Fifth Amendment. Section 782 requires that a vehicle be used in violation of some provision of Section 781 before it may be seized and forfeited. Without proof that the owner has violated Section 781, no forfeiture is authorized by Section 782. Petitioner contends that the forfeiture herein is therefore invalid for the reason that Burgard was not

charged or convicted by a jury of a violation of 49 U.S.C. Section 781. Rather, he was charged with and convicted of conspiracy to violate the National Firearms Registration Act, 26 U.S.C. Section 5801, et seq., in violation of 18 U.S.C. Section 371, and transfer of two silencers in violation of 26 U.S.C. Section 5861(e). Absent a conviction of Burgard for a violation of one of the various acts prohibited by 49 U.S.C. Section 781, petitioner contends that due process has not been followed so as to support a forfeiture.

Petitioner further contends that the district court was without jurisdiction to authorize the forfeiture. As of the date of the filing of the Complaint, Appendix C, which was September 24, 1975, Burgard had not as yet been convicted of any violation. In particular he had not been convicted of transporting contraband pursuant to 49 U.S.C. Section 781. Without such a conviction, there is nothing to indicate that any violation of that section had occurred, so as to authorize forfeiture under 49 U.S.C. Section 782. Even after Burgard's conviction, he had not been shown to have violated 49 U.S.C. Section 781; therefore, inasmuch as the grounds for the forfeiture required a showing that 49 U.S.C. Section 781 had been violated, the district court was without jurisdiction to authorize said forfeiture.

CONCLUSION

The explicit conflict among the circuits as to seizure without a warrant, the conflict of the Eighth Circuit Court of Appeals decision with prior decisions of this Court, and the unsettled nature of these issues in general provide ample justification for the granting of this petition for a writ of certiorari. We therefore suggest that certiorari should be granted in this case.

Respectfully submitted,

JAMES R. WYRSCH and

RICHARD H. ANTON

Attorneys for Petitioner

APPENDIX A

**UNITED STATES COURT OF APPEALS
For the Eighth Circuit**

No. 76-2062

United States of America,
Appellee,

v.

One 1974 Cadillac Eldorado,
VIN 6L47S4Q428834,
Appellant.

Appeal from the United States District Court
for the Western District of Missouri

Submitted: August 1, 1977

Filed: August 5, 1977

Before HEANEY, ROSS and HENLEY, Circuit Judges.

PER CURIAM.

Cleo Burgard appeals from the district court's¹ order of forfeiture in this action, brought under 26 U.S.C. § 7302 and under 49 U.S.C. § 782, for forfeiture of a 1974 Cadillac Eldorado used to transport illegal firearms in violation of 49 U.S.C. § 781. We affirm.

During an undercover investigation into possible violations of the National Firearms Registration Act, agents of the Alcohol, Tobacco and Firearms Division of the Department of Treasury received information that Cleo Burgard

1. The Honorable William H. Becker, Chief Judge, United States District Court for the Western District of Missouri.

was supplying a certain Gary Johnson with firearms. On May 5, 1975 an agent met with Johnson for a prearranged purchase of two silencers, but was told by Johnson that Burgard had said that he could not deliver them that day and that the agent could not be present when the silencers were delivered. The following day a private citizen assisting in the investigation told the agents that Burgard and Johnson would meet in a particular location that day. That morning Burgard was observed removing a blue and white box from the trunk of his Eldorado, taking the box into his garage, and thereafter replacing the box in the interior of the vehicle. Burgard and Johnson were observed traveling to the specified location. One agent observed Johnson and Burgard in an alleyway and saw Burgard reach into the Cadillac Eldorado, remove a light colored tube from the rear seat area, and pass the tube to Johnson. After Johnson was observed reaching into his jacket, Burgard and Johnson were placed under arrest and searched. Two .22 caliber maxim silencers were found on Johnson's person. The Cadillac was seized without a warrant.

Burgard was convicted on one count of violating 26 U.S.C. § 5812 and § 5861(c) by transferring two silencers without a written application form, and one count of conspiracy to violate §§ 5812, 5861(d) and 5861(e) by possessing unregistered firearms and transferring them without an application form. The conviction was affirmed upon appeal in *United States v. Burgard*, 551 F.2d 190 (8th Cir. 1977).

A civil action for forfeiture of the Cadillac Eldorado was filed on September 24, 1975, and answered by Burgard. The parties entered into a stipulation agreeing that the court could consider the testimony and evidence adduced during Burgard's trial on the criminal charges set forth above, and that neither the United States nor Burgard

desired to submit additional evidence or offer additional testimony. In a series of pleadings Burgard alleged, *inter alia*, that neither the Secretary of the Treasury nor his delegate had authorized the proceeding, and that neither the Attorney General nor his delegate had authorized the proceeding to be commenced, in violation of 26 U.S.C. § 7401; that the parties' stipulation prohibited the court from considering a letter from a Regional Counsel of the Department of the Treasury to the United States Attorney authorizing the forfeiture proceeding; and that the forfeiture statutes authorizing the action, 26 U.S.C. § 7302 and 49 U.S.C. § 782, were unconstitutional on their face and as applied because the seizure of the Cadillac violated the fourth, fifth and sixth amendments of the United States Constitution.

The district court ordered that the Cadillac Eldorado be forfeited to the United States on November 22, 1976. In a lengthy memorandum opinion the court held that the parties' stipulation did not prevent introduction of the Regional Counsel's authorization letter, that the government had shown that the Secretary of the Treasury or his delegate had authorized the action, and that a delegate of the Attorney General had authorized commencement of the action. The court also held that the government had established that probable cause existed to believe that the vehicle was used to transport a contraband article, that the forfeiture of a vehicle used by its owner to transport contraband goods does not violate the due process clause of the fifth amendment, and that the seizure of the vehicle without a warrant was justified in this instance because of "exigent circumstances."

On appeal Burgard urges three grounds of error: (1) that no exigent circumstances existed so as to justify the warrantless seizure of the automobile; (2) that the district

court's finding of authorization to initiate the action was erroneous because the government's evidence of authorization should not have been admitted following the parties' stipulation and because 26 U.S.C. § 7401 allows for the authorization and commencement of only a civil action, whereas a forfeiture is an action criminal in nature; and (3) that 49 U.S.C. § 782 is unconstitutional on its face as repugnant to the fifth amendment privilege against self-incrimination.

The overwhelming weight of authority supports the traditional rule that when agents have probable cause to believe that an automobile is or has been used to transport or to facilitate the transportation or possession of contraband, they may seize it without a warrant pursuant to federal forfeiture statutes. See, e.g., *Carroll v. United States*, 267 U.S. 132, 155-56 (1925); *United States v. La Vecchia*, 513 F.2d 1210, 1216 (2d Cir. 1975); *United States v. Dinapoli*, 519 F.2d 104 (6th Cir. 1975); *United States v. Young*, 456 F.2d 872, 875 (8th Cir. 1972); *United States v. Stout*, 434 F.2d 1264, 1267 (10th Cir. 1970); *United States v. Troiano*, 365 F.2d 416 (3d Cir.), cert. denied, 385 U.S. 958 (1966); *Drummond v. United States*, 350 F.2d 983 (8th Cir. 1965), cert. denied sub nom., *Castaldi v. United States*, 384 U.S. 944 (1966). Contra, *United States v. McCormick*, 502 F.2d 281 (9th Cir. 1974); *Melendez v. Shultz*, 356 F.Supp. 1205 (D. Mass. 1973) (three judge court); *remanded on other grounds*, 486 F.2d 1032 (1st Cir. 1973). The officers here had probable cause to believe that the Cadillac had been used to transport contraband illegally. Johnson had informed the agents that he was going to get the silencers from Burgard, agents had observed Burgard loading the Cadillac Eldorado, one agent had seen the transfer of a silencer from the rear of Burgard's automobile to Johnson, and silencers were thereafter found on Johnson's person.

Accordingly, the seizure of the Cadillac without a warrant did not violate the fourth amendment.²

Even if the seizure were unlawful, that fact alone would not necessarily preclude forfeiture. Since the evidence showing that the Cadillac was used to transport contraband was independent of the seizure, application of the constitutional exclusionary rule need not prevent forfeiture. See *United States v. One (1) 1971 Harley Davidson Motorcycle*, 508 F.2d 351 (9th Cir. 1974).

Burgard next contends that the court below erred in admitting the government's documentary evidence of authorization to commence the forfeiture proceeding, a jurisdictional requirement. He claims that the parties' stipulation that the court could consider the evidence adduced at Burgard's criminal trial as neither party wished to submit further evidence or testimony precluded admission of the documentary evidence.

We find it doubtful that the stipulation was intended to preclude the introduction of documentary evidence, particularly as to a jurisdictional issue on which the facts adduced at the earlier criminal trial could not possibly be relevant. The stipulation was requested by the trial court so that the record would show that neither party desired an

2. We are aware that the Ninth Circuit has held, in *United States v. McCormick*, *supra*, that the exception to the warrant requirement set forth in *Carroll v. United States*, *supra*, will justify the warrantless seizure of an automobile pursuant to 49 U.S.C. § 782 only when the automobile is movable and it is not practical to secure a warrant. The instant seizure meets this stricter test as well since the automobile was movable and stopped in an alleyway from which it could easily have been removed. Although Burgard argues that a warrant could have been obtained because a police car blocked the exit, immobilizing the automobile while a warrant was obtained would be, constitutionally speaking, no less an intrusion than immediate seizure. Cf. *Chambers v. Maroney*, 399 U.S. 42, 51 (1970) (immobilization of automobile not different for constitutional purposes from immediate search without a warrant).

evidentiary hearing. Even if it does preclude submission of the documentary evidence, the necessity to investigate jurisdictional facts is an appropriate reason for a trial court to exercise its discretion to relieve a party from a stipulation. See *Fenix v. Finch*, 436 F.2d 831, 837 (8th Cir. 1971); *Osborne v. United States*, 351 F.2d 111, 120 (8th Cir. 1965). Since this particular stipulation was entered into merely to expedite the proceeding and to clarify the record, rigid adherence to it should not be required when one party may suffer manifest injustice. *United States v. Rexach*, 482 F.2d 10, 26-27 (1st Cir.), cert. denied, 414 U.S. 1039 (1973); *Central Distributors, Inc. v. M.E.T., Inc.*, 403 F.2d 943, 946 (5th Cir. 1968).

Burgard argues finally that this forfeiture action was not authorized because 26 U.S.C. § 7401 provides for authorization of civil actions only, and a forfeiture action, while civil in form, has been held to be quasi-criminal in nature.³ This argument borders on frivolity. While it is true that forfeiture actions have been held to be quasi-criminal in nature for purposes of fourth and fifth amendment analysis, *United States v. United States Coin and Currency*, 401 U.S. 715, 718 (1971); *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693, 700 (1965); *Compton v. United States*, 377 F.2d 408, 411 (8th Cir. 1967), a forfeiture is nevertheless a civil action formally, and the statute specifically refers to commencement of a forfeiture proceeding.

Similarly we find no merit in the contention that 49 U.S.C. § 782 is unconstitutional on its face because it is

3. 26 U.S.C. § 7401 provides:

No civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Secretary [of the Treasury] or his delegate authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced.

repugnant to the fifth amendment privilege against self-incrimination. Burgard claims that the seizure and subsequent search of an automobile pursuant to § 782 may force disclosure of additional evidence concealed therein, without the owner or operator being able to invoke the privilege against self-incrimination. However, if the seizure and search of the automobile are constitutional, the evidence found clearly may be introduced at trial. *United States v. Young*, supra; *Drummond v. United States*, supra. The statute, 49 U.S.C. § 781, which forms the basis for forfeiture and makes transportation or concealment of contraband firearms in any vehicle unlawful, does not compel self-incrimination, and is therefore easily distinguishable from the gambling tax laws in the case upon which Burgard relies, *United States v. United States Coin and Currency*, supra.

The judgment is affirmed.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH
CIRCUIT.

(UNPUBLISHED)

APPENDIX B

IN THE
UNITED STATES DISTRICT COURT
For the Western District of Missouri
Western Division

Civil Action

No. 75CV638-W-1-3

UNITED STATES OF AMERICA,
Plaintiff,

v.

ONE 1974 CADILLAC ELDORADO,
VIN 6L47S4Q428834,
Defendant.

**FINAL JUDGMENT GRANTING DECREE
OF FORFEITURE**

(Filed November 22, 1976)

This is an action under Section 782, Title 49, United States Code, for forfeiture of a 1974 Cadillac Eldorado, VIN6L47S4Q428834 (hereinafter "Cadillac Eldorado"), allegedly used to transport illegal firearms in violation of Section 781, Title 49, United States Code. An answer and claim has been filed by Cleo Burgard as owner of the Cadillac Eldorado.

The action has been submitted for determination on the basis of the evidence presented during the pretrial hearings and trial in *United States v. Cleo Burgard*, Criminal Action No. 75CR139-W-3 (W.D.Mo. February 11, 1976). The parties have stipulated that neither party desires to introduce additional evidence or to offer additional testi-

mony. The following findings of fact and conclusions of law are made based upon the evidence in *United States v. Cleo Burgard, supra*.

I. *Findings of Fact.*

For some time prior to May 5, 1975, Agent Robert Manske of the Alcohol, Tobacco, and Firearms Division of the Department of the Treasury (hereinafter "ATFD") had conducted an undercover investigation into possible violations of the National Firearms Registration Act by a nephew of claimant Burgard, Garry Johnson.¹ Informants had advised Manske that machine guns had been purchased from Johnson. Manske also had information concerning statements by Johnson that claimant Burgard was supplying Johnson with the firearms.

On May 4 and 5, 1975, Manske attempted to arrange a purchase of two silencers which Johnson had stated could be obtained from claimant Burgard. A meeting was arranged on May 5, 1975, between Manske and Johnson in the parking lot of the Research Hospital Outpatient Clinic at 64th and Prospect in Kansas City, Missouri. When Manske arrived, Johnson told him he would have to telephone claimant Burgard to obtain the silencers. After making a telephone call, Johnson informed Manske that claimant Burgard would not have the silencers that day, and that Manske could not be present when claimant Burgard delivered the silencers to Johnson.

On May 6, 1975, Manske received a telephone call from Roger Kennedy, a private citizen cooperating in the investigation. Kennedy informed Manske that the meeting between claimant Burgard and Johnson would take place

1. Garry Johnson was a co-defendant in *United States v. Cleo Burgard, supra*.

that morning near 64th and Troost in Kansas City, Missouri.

Also on the morning of May 6, 1975, Agent Gary R. Wurm of the ATFD was conducting surveillance of claimant Burgard's residence at Garden City, Missouri. Agent Wurm observed claimant Burgard remove a blue and white box from the trunk of his 1974 Cadillac Eldorado; take the box into his garage; and then place the box back into the interior of the vehicle.

At least seven ATFD agents were then deployed in the area of 64th and Troost to observe the transfer. Agents Duane R. Nichols and Jonathon G. Knehaus had taken a position on the upper level parking lot of The Landing Shopping Center located at 63rd and Troost. At approximately 11:10 a.m., Agent Nichols was advised by radio that a Ford Ranchero automobile being driven by Johnson was approaching. Nichols observed the Ranchero pass his surveillance point going east on 63rd Street, and turn right halfway down the block into an alley entrance. Nichols then proceeded to the alleyway on foot. As he approached the alleyway, Nichols observed claimant Burgard's Cadillac Eldorado parked in the alleyway facing north. The front door was open and the driver's seat was pushed forward to allow entry into the back seat. The parties have stipulated that the Cadillac Eldorado observed is the defendant in this action.

Agent Nichols then observed claimant Burgard reach into the Cadillac Eldorado, remove a light colored tube from the rear seat area, and pass the tube to Johnson. Claimant Burgard and Johnson were placed under arrest, and searched after Johnson was observed reaching into his jacket. On Johnson were found two .22 caliber Maxim silencers. The Cadillac Eldorado was seized without a warrant.

On May 8, 1975, claimant Burgard was indicted on one count of conspiracy to violate the National Firearms Registration Act, Section 5801, *et seq.*, Title 26, United States Code, in violation of Section 371, Title 18, United States Code; and one count of transfer of the two .22 caliber Maxim silencers in violation of Section 5861(e), Title 26, United States Code. On February 11, 1976, claimant Burgard was convicted by a jury on both counts.

II. Conclusions of Law.

A. Jurisdiction.

Section 1355, Title 28, United States Code, confers original jurisdiction on the federal district courts over any action for the enforcement of a forfeiture incurred under any Act of Congress.

However, Section 7401, Title 26, United States Code, provides in pertinent part:

"No civil action for the collection or recovery of . . . any . . . forfeiture, shall be commenced unless the Secretary [of the Treasury] or his delegate authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced."

The requirements of Section 7401, *supra*, were held to be "jurisdictional" in *United States v. One 1972 Cadillac Coupe Deville, Etc.*, 355 F.Supp. 513 (E.D.Ky. 1973).

The government alleged in the complaint that "[t]his suit has been authorized, sanctioned, and directed in accordance with the provisions of 26 U.S.C. § 7401." Defendant interposed a specific denial of this allegation. Cf: *United States v. One 1941 Cadillac Sedan, Etc.*, 145 F.2d 296 (7th Cir. 1944).

On July 22, 1976, the government filed a copy of a letter from David A. Pierce, Regional Counsel of the Department of the Treasury to the United States Attorney, dated September 2, 1975, authorizing the United States Attorney to bring this action.² The interested party was directed to show cause why the letter did not satisfy the requirement that the Secretary of the Treasury or his delegate authorize this action.

2. The letter states:

"DEPARTMENT OF THE TREASURY
Bureau of Alcohol, Tobacco and Firearms
Office of Chief Counsel
15th Floor—230 South Dearborn Street
Chicago, Illinois 60604
SEP 2 1975

"Honorable Bert C. Hurn
United States Attorney
Federal Courts Building
811 Grand Avenue
Kansas City, Missouri 64106

Re: Case No. 3703 0275 0012 R
Cleo Burgard
RFD No. 2
Garden City, Missouri
One, 1974 Cadillac Eldorado
I.D. No. VIN 6L47S4Q428834

"Dear Sir:

"Enclosed are Form 63, Property Report, and a copy of Case Report No. 3703 0275 0012R, relative to the subject seized vehicle.

"The subject vehicle was seized under the provisions of the Act of August 9, 1939, from Cleo Burgard, RFD No. 2, Garden City, Cass County, Missouri, at 63rd and Troost Street, Kansas City, Jackson County, Missouri, on May 6, 1975, and is stored at Sam's PickWick Garage, 307 East 9th, Kansas City, Missouri.

"The facts relevant to forfeiture as revealed by the Case Report are that on May 6, 1975, at 63rd and Troost Street, in Kansas City, Jackson County, Missouri, Cleo Burgard used the subject vehicle to possess, conceal, and transport two Maxim Silencers, firearms coming within the purview of the National Firearms Act as amended, which had not been registered with the National Firearms Registration and Transfer

(Continued on following page)

In response to the show cause order, the interested party made three contentions. First, he contended that the Pierce letter should not be considered since the record was closed by the stipulation of the parties filed June 25, 1976. Second, he contended that the letter does not establish that the Secretary of the Treasury has delegated to the Regional Counsel the power to authorize forfeiture actions. Finally, he contended that no evidence has been presented that this action was "commenced" by the Attorney General or his delegate. None of these contentions has merit.

First, the June 25, 1976⁶ stipulation that "neither [party] desires to introduce additional evidence or offer additional testimony" was entered into by the parties at the request of the Court so that the record would show that neither party desired an evidentiary hearing since the material facts had been developed in *United States*

Footnote continued—

Record as required by 26 U.S.C. §5841 and were contraband as defined in 49 U.S.C. §781. The use of the subject vehicle to possess, conceal, and transport the contraband firearms subjected the vehicle to forfeiture under the provisions of the Act of August 9, 1939, (49 U.S.C. §782).

"Pursuant to the provisions of 26 U.S.C. §7401, you are hereby authorized and requested to proceed to file a Complaint against the subject vehicle.

"All bills and vouchers concerning the expenses incurred by seizure of the subject property will be sent to the United States Marshal.

"We have enclosed a proposed Complaint for your use in the event you find it appropriate.

"If we may be of further assistance to you in this matter, please advise.

Very truly yours,

/s/ David A. Pierce
David A. Pierce
Regional Counsel

Enclosures"

v. *Burgard*, Criminal Action No. 75CR139-W-3. The stipulation thus does not bar the consideration of documentary evidence which does not require an evidentiary hearing.

Second, the authority of the Regional Counsel of the Bureau of Alcohol, Tobacco, and Firearms to authorize commencement of this action does not appear in the Pierce letter. However, the term "Secretary or his delegate" is defined in Section 7701(a)(12)(A), Title 26, United States Code, to mean:

. . . the Secretary of the Treasury, or any officer, employee, or agency of the Treasury Department duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform the function mentioned or described in the context, and the term "or his delegate" when used in connection with any other official of the United States shall be similarly construed.

The Secretary has delegated to the Chief Counsel for the Bureau of Alcohol, Tobacco, and Firearms the authority

[t]o determine what civil action should be brought in the courts under the laws affecting and administered by the bureau and to prepare recommendations to the Department of Justice for the commencement of such action *and to authorize or sanction commencement of such actions.* (emphasis supplied) 40 Federal Register 3479 (January 22, 1975).

The Chief Counsel of the Bureau of Alcohol, Tobacco, and Firearms has redelegated this authority to the regional counsels. Chief Counsel Order No. 6, "Regional Counsel Delegations of Authority", July 22, 1975.³ Therefore, the

3. See Exhibits A and C attached to the interested party's "Response to Show Cause Order", filed August 13, 1976.

regional counsels have been properly delegated the authority to authorize commencement of this action.

Finally, the United States Attorney can be considered a "delegate" of the Attorney General within the meaning of Section 7401, Title 26, United States Code. The term "delegate" of the Attorney General is defined to mean any officer or employee duly authorized by the Attorney General to perform the particular function in question. Section 7701(a)(12)(A), Title 26, United States Code. The United States Attorneys can properly be considered as the "delegates" of the Attorney General under this definition. Because this action was commenced by a United States Attorney, a "delegate" of the Attorney General has directed that the action be commenced.

Because the action was "authorized" by a delegate of the Secretary of the Treasury, and "commenced" by a delegate of the Attorney General within the meaning of the term "delegate" as defined by Section 7701, Title 26, United States Code, the requirements of Section 7401, Title 26, United States Code, have been satisfied.

B. Merits.

Section 781, Title 49, United States Code, provides in pertinent part:

"(a) It shall be unlawful (1) to transport, carry, or convey any contraband article in . . . any . . . vehicle. . . .

* * *

"(b) As used in this section, the term 'contraband article' means—

* * *

"(a) Any firearm, with respect to which there has been committed any violation of any provision of the National Firearms Act. . . ."

Section 782, Title 49, United States Code, provides in pertinent part:

"Any . . . vehicle . . . which has been or is being used in violation of any provision of section 781 of this title . . . shall be seized and forfeited: . . . *Provided further*, that no . . . vehicle shall be forfeited under the provisions of this chapter by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such . . . vehicle . . . was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States, or any State." (emphasis added)

Once the government establishes probable cause that a vehicle was used to transport a contraband article, "the burden of absolving the vehicle from culpability rests on the defendant." *United States v. One 1972 Toyota Mark II, Etc.*, 505 F.2d 1162, 1164 (8th Cir. 1974); *Ted's Motors, Inc. v. United States*, 217 F.2d 777, 780 (8th Cir. 1954). Probable cause

". . . means less than prima facie legal proof and no more than 'a reasonable ground for belief in guilt'. *Carroll v. United States*, 267 U.S. 132, 161, 45 S.Ct. 280, 288, 69 L.Ed. 543." (other citations omitted)

Ted's Motors, Inc. v. United States, *supra*, 217 F.2d at 780.

The government has shown that probable cause exists to believe that the defendant Cadillac Eldorado was used to transport two .22 caliber Maxim silencers in violation of the National Firearms Act by claimant Burgard who is the owner of the vehicle. The only defenses which have been raised are conclusionary allegations that this action is not brought in accordance with "applicable stat-

utes" and denies defendant of his right to due process in violation of the Fifth Amendment to the United States Constitution; and that the seizure of the automobile was unreasonable and violated the Fourth, Fifth and Sixth Amendments to the United States Constitution. However, for the reasons stated above, this action has been authorized by Congress. Further, forfeiture of a vehicle used by its owner to transport contraband goods does not violate the Due Process Clause of the Fifth Amendment. *United States v. One 1967 Porsche, Etc.*, 492 F.2d 893 (9th Cir. 1974); *United States v. One 1969 Plymouth Fury Automobile, Etc.*, 476 F.2d 961 (5th Cir. 1973). Cf: *United States v. United States Coin and Currency*, 401 U.S. 715, 91 S.Ct. 1041, 28 L.Ed.2d 434 (1971). Finally, warrantless seizure of the vehicle did not violate the Fourth Amendment prohibition against unreasonable searches and seizures. Probable cause existed to believe that the vehicle had been used to transport illegal firearms. Because the events constituting the offense occurred in the presence of ATFD agents, and because of the mobility of the automobile, "exigent circumstances" existed which justified the failure to procure a warrant for seizure of the automobile prior to seizure.

Therefore, a decree of forfeiture will be entered.⁴

For the foregoing reasons, it is therefore

ORDERED, ADJUDGED, and DECREED that defendant One 1974 Cadillac Eldorado, VIN6L47S4Q428834 be, and it is hereby, forfeited and condemned to the use of the United States of America. It is further

4. On May 5, 1976, the government moved for an order directing delivery of the defendant vehicle to the Regional Director of the Bureau of Alcohol, Tobacco, and Firearms, Chicago, Illinois. This "application" is rendered moot by this decree.

ORDERED, ADJUDGED, and DECREED that the defendant 1974 Cadillac Eldorado, VIN6L47S4Q428834 be delivered to the Regional Director of the Bureau of Alcohol, Tobacco, and Firearms, Chicago, Illinois, or his representative, conditioned upon payment of any costs of storage currently due and owing.

/s/ William H. Becker
William H. Becker
Chief Judge

Kansas City, Missouri

Dated: 11-22-76

APPENDIX C

IN THE
UNITED STATES DISTRICT COURT
For the Western District of Missouri
Western Division

No. 75CV638-W-1

UNITED STATES OF AMERICA,
Plaintiff,

v.

ONE 1974 CADILLAC ELDORADO
VIN 6L47S4Q428834,
Defendant.

COMPLAINT

(Filed September 24, 1975)

Comes now the United States of America, by Bert C. Hurn, United States Attorney for the Western District of Missouri, and by Robert G. Ulrich, Assistant United States Attorney for the Western District of Missouri, and through this complaint in a civil cause for forfeiture of Section 7302 of the Internal Revenue Code of 1954 (26 U.S.C. § 7302) upon information and belief alleges as follows:

1. This court has jurisdiction under the provisions of 28 U.S.C. § 1345.
2. This suit has been authorized, sanctioned, and directed in accordance with the provisions of 26 U.S.C. § 7401.

3. Pursuant to the facts alleged herein and the provisions of the sections of the Internal Revenue Code enumerated herein and Title 49, United States Code, Sections 781 and 782, the property described in paragraph four herein became and is forfeited to the United States.

4. On May 6, 1975, the Director of the Bureau of Alcohol, Tobacco and Firearms, acting through his duly authorized agents, did seize on land located at 63rd and Troost Street, Kansas City, Jackson County, Missouri, in the Western District of Missouri, as forfeited to the United States of America, certain property, to-wit: one 1974 Cadillac Eldorado, Vehicle Identification Number 6L47S4Q42-8834, the appraised value of said vehicle at the time of seizure being \$6,500.00.

5. Since the time of the seizure of said property it has remained in the custody of the Bureau of Alcohol, Tobacco and Firearms, and is now stored at Sam's Pick-Wick Garage, 307 East 9th Street, Kansas City, Missouri.

6. On or about May 6, 1975, Cleo Burgard used the property described in paragraph four hereof to possess, conceal, and transport two Maxim Silencers, firearms within the purview of the National Firearms Act as amended, which had not been registered in the National Firearms Registration and Transfer Record as required by 26 U.S.C. § 5841, and being contraband as defined by 49 U.S.C. § 781, from a point unknown to 63rd and Troost Street, Kansas City, Jackson County, Missouri.

WHEREFORE, plaintiff prays that due process issued to bring said property within the custody of this court by attachment, that warrant for arrest issue with notice to all parties and interest to appear on the date of return of such process and to intervene herein by claims and

plea in the premises; and due proceedings being had thereon, that for the cause aforesaid, the said property be condemned as forfeited to the United States and a decree for the proper disposal thereof be made.

Bert C. Hurn
United States Attorney
By **Robert G. Ulrich**
Assistant United States Attorney

State of Missouri)
) ss
County of Jackson)

Pursuant to Rule C(2), Supplemental Rules to the Federal Rules of Civil Procedure, Robert G. Ulrich, Assistant United States Attorney, being duly sworn, states that the facts set forth herein in the foregoing complaint are true and correct according to his best knowledge and belief.

Robert G. Ulrich
Assistant United States Attorney

Sworn to before me and in my presence this
day of September, 1975.

Robert F. Connor, Clerk
United States District Court
Western District of Missouri

IN THE
UNITED STATES DISTRICT COURT
For the Western District of Missouri
Western Division

No. 75CV638-W-1

UNITED STATES OF AMERICA,
Plaintiff,

v.

ONE 1974 CADILLAC ELDORADO
VIN 6L47S4Q428834,
Defendant.

WARRANT FOR ARREST OF PROPERTY

THE PRESIDENT OF THE UNITED STATES OF
AMERICA TO THE UNITED STATES MARSHAL FOR
THE WESTERN DISTRICT OF MISSOURI

GREETINGS:

Whereas, a verified complaint has been filed in the District Court of the United States for the Western District of Missouri on the 24 day of September, 1975, on behalf of the United States of America, against one 1974 Cadillac Eldorado automobile, Vehicle Identification Number 6L47S4Q428834, now in the possession of the Bureau of Alcohol, Tobacco and Firearms, United States Treasury Department, and being stored at Sam's PickWick Garage, 307 East 9th, Kansas City, Missouri;

You are, therefore, commanded to attach the said vehicle and to detain the same in your custody until further ordered by the court, and to give due notice, pursuant to Rule C of the Supplemental Rules to the Federal Rules

of Civil Procedure, to all persons claiming the same or owning or having any interest in said vehicle to show cause why the said vehicle should not be condemned and forfeited pursuant to the prayer of the complaint. Any claimants to the property shall and must file their claims in writing with the clerk of this court within ten days after the execution of this process, or within such additional time as may be allowed by the court, and shall serve their answers within 20 days after the filing of their claims. All claims shall comply with the requirement of paragraph (6) of Rule C of the Supplemental Rules to the Federal Rules of Civil Procedure.

The Marshal, after execution of this process, shall file the same in this court with his return thereon.

IN WITNESS WHEREOF, I, ROBERT F. CONNOR, Clerk of the United States District Court for the Western District of Missouri, have caused the foregoing Warrant for Arrest of Property to be issued pursuant to the authority of Rule C of the Supplemental Rules to the Federal Rules of Civil Procedure and the applicable laws of the United States and have hereunto fixed seal of said court at Kansas City, Missouri this 24 day of September, 1975.

/s/ H. C. Lawhorn

Clerk, United States District
Court for the Western District of Missouri by Deputy

A24

IN THE
UNITED STATES DISTRICT COURT
For the Western District of Missouri
Western Division

No. _____

UNITED STATES OF AMERICA,
Plaintiff,

v.

ONE 1974 CADILLAC ELDORADO
VIN 6L47S4Q428834,
Defendant.

PUBLIC NOTICE

Pursuant to a Warrant for Arrest of property seized in the above-entitled cause, I did, on the _____ day of _____, 1975, seize from Sam's PickWick Garage, 307 East 9th, Kansas City, Missouri, one 1974 Cadillac Eldorado, Vehicle Identification Number 6L47S4Q428834.

Pursuant to Rule C of the Supplemental Rules to the Federal Rules of Civil Procedure, I hereby give notice generally unto all persons having or claiming to have any right, title, or interest in said property, that they must file their claims with the Clerk of this Court within ten days after the date of this Notice, or within such additional time as may be allowed by this Court, and they must serve their answers to the Complaint within twenty days after the filing of their claim. All claims filed shall comply with the requirements of paragraph (6) of Rule C of the Supplemental Rule to the Federal Rules of Civil Procedure.

A25

Dated at Kansas City, Missouri, this _____ day of _____, 1975.

John T. Pierpont
United States Marshal

By: _____
Deputy United States Marshal